

**CITY OF CHULA VISTA
MINUTES
MOBILEHOME RENT REVIEW COMMISSION**

Thursday, July 15, 2010
6:00 P.M.

**CITY HALL
COUNCIL CHAMBERS**

CALL TO ORDER/ROLL CALL – 6:04 P.M.

PRESENT: Brett Davis, Steve Epstein, Rudy Gonzalez, Sam Longanecker, Cesar Padilla, Ramon Riesgo, Pat LaPierre

ABSENT: N/A

STAFF: Stacey Kurz, Senior Project Coordinator
Simon Silva, City Attorney

1. APPROVAL OF MINUTES

June 16, 2010

Member Davis made a motion to approve the minutes. Member Riesgo seconded the motion. All members agreed to the approval of the minutes.

2. BRENTWOOD MOBILE HOME PARK HEARING CONTINUATION

The Commission had closed the public discussion from the May 19th and deliberations from the June 16th hearings and this meeting will continue the Commissioner's discussion on the proposed rent increases for two hundred (200) spaces at Brentwood Mobile Home Park, located at 1100 Industrial Boulevard in Chula Vista.

Chair Padilla indicated that the previous hearing had been tabled in order to allow time for the Public Utilities Commission (PUC) to respond to the complaint filed with them in regards to the electrical system pass-through. He further indicated that we have heard back from the PUC since that time and they have indicated that they will not be providing further guidance.

Staff Kurz indicated that in addition to the form letter that was received from the PUC, the City had spoken directly to the PUC and was informed that they viewed the purchase of the park by the new owner and replacement of the electrical system as a "restarting of the clock" and the current park owner has not violated any tariff or PUC regulations for them to review, therefore they consider this a non-jurisdictional item. Staff's recommendation remains consistent with the original May 19th staff report to establish the comparable fair market rent which ranges between \$550 and \$600, and increase rent for any affected resident below that value, up to market, but not to exceed \$96 over the three year period.

Attorney Silva has reviewed the issue and documentation from Dr. McCann, Bruce Stanton's article, PUC regulations, and other court cases. In regards to the PUC and the utility discount, the court cases provide guidance on the responsibility of a master meter system, whereby the park owner is rebated for the portion of the system that he must maintain that would otherwise be maintained by the utility. Specifically, the Handley case provides further guidance on when improvements are made by a park owner they do so at their own risk, however footnote 12 further identifies that an opportunity existed for the owner to go to the PUC in order to clarify what was an allowable pass-through and they further investigated and came to a decision on this issue. The PUC decision was that costs for common areas, and items hooked up to the house (i.e. pedestals), and when upgrading the system: trenching, conduits, etc. are an allowable pass-through. Attorney Silva therefore concluded that based on the evidence presented by the park owner and the cases cited, the electrical system upgrade expenses would be an allowable pass-through. However, this is one factor to consider when looking at whether the rent increase is fair and reasonable, and there are other factors to be considered as identified under Chula

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Vista Municipal Code (CVMC) 9.50.073. He further identified that there was substantial evidence to support staff's recommendation.

Member Gonzalez asked if an upgrade is equivalent to a replacement. Attorney Silva responded indicating that the park was not in a position to repair the 30 amp system, and therefore upgraded the system to 100 amps. Staff Kurz followed indicating that the Title 25 code violation that existed under the previous park owner was for the 30 amp system, and required a repair to such system since it was of a vintage pre-1975 (and is grandfathered from meeting current standards), however it was determined that such repair would be difficult and the more appropriate measure was to upgrade to the current standard of 100 amps.

Member LaPierre provided comments on the rebate received by the master meter park owner, and indicated that if a pass-through was to be given it should be for the expense above the replacement cost. Thereby only passing the expense to upgrade from 30 to 100 amps, since over time the park owner received the rebate to cover such maintenance and replacement costs.

Member Epsten indicated that it is difficult to qualify that difference since we do not have any idea what the cost to repair the 30 amp system would have been, and further indicated that the PUC indicated that the double dipping of funds is not an issue, since the clock started over for this new park owner and the rebate given over the years to maintain the system was benefited by the previous park owner.

Member LaPierre followed by stating that the Rainbow case provides guidance on the replacement of a system and during the Bayscene case a few years ago the fair rate of return expert Dr. Kenneth Baar excluded replacement cost as a pass-through.

Attorney Silva indicated that at this point the park owner is required to maintain the 100 amp system and if down the road he had to replace the system, it would not be an allowable pass-through. Member LaPierre asked if we then considered this new construction. Attorney Silva responded that the park owner has not done anything to fail to maintain the system or cause the need to replace, and this is being treated as an upgrade as identified in the Handley case. And it is further the Commission's right to argue whether that full cost should be passed-through.

Member Gonzalez commented that he agrees to some extent with Attorney Silva, although rightfully and prudently so, a substantial part of the system was replaced and he therefore views this differently. Attorney Silva responded indicating that he believes that was done to be consistent with code.

Chair Padilla asked if Attorney Silva found any costs that have been claimed that were not consistent as allowable under CVMC 9.50. Attorney Silva responded indicating that the only item of concern is the construction of nine (9) new sites and since they are not governed under the rent review ordinance and one of the factors allows consideration as to whether there is an offset to the expense. In this case if the sites were previously vacant you would consider what offset in profit is being made by being able to charge market rent for the spaces since they are not under CVMC 9.50.

Chair Padilla further asked about the fire hydrant code violation and whether this should be considered as an allowable pass-through. Attorney Silva indicated that this item is to benefit the community and under Appendix 2 of CVMC 9.50 it is not a serious code violation item.

Chair Padilla further addressed the one-time land lease extension expense and asked if this can be considered a refinance. Attorney Silva indicated that this extension is considered a new allowable expense as a mortgage or rent as identified in CVMC 9.50. The lease extension has provided them with addition rights to occupy the property for 30 more years.

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Member LaPierre commented on the zoning of the park as MHP and the difficulty the park owner would have in order to change use. Staff Kurz further commented that the purview of the City is strictly tied to the property and the zoning of such. The right to operate the park through the lease is not governed by the City. Attorney Silva further commented that the zoning would not change by the termination of a lease. Further discussion regarding the lease extension and potential lease termination occurred.

Member Gonzalez indicated that he believes the park owner did their economics on the land lease extension and other purchase costs when purchasing the park, and while they may not be getting as large of a return as they may have wanted, but he believes they will still be getting a fair rate of return.

Chair Padilla asked Attorney Dahlin, park owner representative, whether any additional monies would be received through San Diego Gas & Electric (SDG&E). Attorney Dahlin responded, no, the park owner will only receive that rebate as allowable through the PUC. Member Gonzalez followed asking how long the rebate is good for. Attorney Dahlin indicated that it is an ongoing differential to offset the expense to maintain. Member Epstein followed by indicating that the differential also covers reading meters, exchanging every ten (10) years and other types of activities that the utility company would otherwise do in a non-master metered system. Member Gonzalez asked what the current rebate is. Attorney Dahlin responded that SDG&E's rate schedule is set by the PUC and it is a published document for all SDG&E customers and master metered systems. Chair Padilla added that the new park owner then received the same differential that the previous park owner had received. Attorney Dahlin and others indicated that they receive the differential as identified in the rate schedule and what was/is in effect at that time.

Chair Padilla asked for additional questions and/or a motion on this item. He further indicated that he understands that this is a hard economy to make these types of decisions, however the commission is tasked to be fair to both sides and this park owner has shown diligence to increase the standard of living at this park. The question is really how much should they be compensated for these changes and

Member Gonzalez made a motion to approve an increase in rent of \$9 per year for a total of \$27 over three years based on the exclusion of the electrical system replacement, fire hydrant replacement, new site construction, and lease extension. There was no second and the motion died.

Member Davis asked for the current average rent and Staff Kurz indicated that the current average at the park is \$556 and \$567 for all comparables.

Member Riesgo clarified staff recommendation that as proposed not all affected residents would receive a \$32, but rather it would vary depending on how much they were currently below market and Staff Kurz concurred. Member Davis asked for current cost of living increases. Staff Kurz indicated that from August 2009 – February 2010 the increase was -0.6% and from February 2010-August 2010 it is 0.6%.

Member Riesgo made a motion to approve staff's recommendation. There was no second and the motion died.

Member Davis made a motion to approve a rent increase of 1.6% per year for the next three years for all affected residents. Attorney Silva indicated that the number that has to be chosen cannot be speculative but rather needs to be based on the information provided and the factors allowed in CVMC 9.50. Member LaPierre indicated what you are really asking for is a fair rate of return, which is a complicated calculation. There was no second and the motion died.

Member Gonzalez commented on why he has excluded the items that had code violations from his previous motions. In 9.50.073 1.g.v. indicates that if the cost of "replacement" was caused by the negligence of the operator, then it shall not be passed on. He believes that there is a separation of land owner versus park operator in this instance, and that is in where the electrical cost should be factored, not passed through to the residents. Additionally 9.50.005 identifies the charge of the commission

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among other items to protect health and welfare of residents and the fire hydrants fall under this category.

Member Davis again made a motion to approve a rent increase of 1.6% per year for the next three years for all affected residents. Staff Kurz indicated this would equate to a \$7-10 increase for the lowest and highest rents affected by the proposed increase. *Member Gonzalez second the motion.*

Member Davis indicated that his motion is based on the economy and the fact that the park owner was knowledgeable of the repairs that were required when purchasing the park. Member Epstein indicated that he feels the motion was partly made on emotions and not purely on the factors of the ordinance. He further indicated that he believes they should not be allowed to pass on the expense of the new sites and a few other minor items but the commission decision should be based on the evidence in light of the factors allowed under the City ordinance. Further discussion regarding the economy occurred.

Chair Padilla commented that he was concerned about using the rationale that when times are tough the commission will not provide a fair return to a park owner, because then there is no incentive for a park owner to invest in a park when it is needed. Member Gonzalez stated that is was his understanding that the Annual Permissive rate is independent of this rental increase and Staff Kurz concurred. Attorney Silva further clarified indicating that the Commission could not ask the park owner to waive rights to the Annual Permissive and that the Commission must look at the factors identified in CVMC 9.50. The park owner is entitled to receive a fair rate and what the market can bare; the economy would be based on the market comparables under our ordinance.

Member Gonzalez indicated that he believes the park owner weighed the level of risk associated with the purchase of the park and the fact that the City has a Rent Review ordinance, and still believes that the expenses he previously identified should not be included.

Member Riesgo asked whether the three year period was at discretion of the Commission. Chair Padilla indicated that the three year period was proposed by the park owner in order he believes, to minimize the increase to residents and the Commission could determine dispersing an increase over a shorter period of time. *Member Gonzalez withdrew his second to the motion.*

Chair Padilla indicated that he sees the electrical expense as an upgrade to the park and should therefore be considered, however he does agree with Member Gonzalez regarding the other three items he previously identified. Chair Padilla indicated that based on the exclusion of the three items it would bring the increase to approximately \$64 and over a three year period \$21 and change.

Member Gonzalez asked if the commission does not come to decision if the petitioners increase automatically goes into effect. Attorney Silva indicated further research would be required into that issue. Member Davis inquired into the anticipated CPI and Staff Kurz indicated that we could not predict what changes will occur in the CPI.

Chair Padilla called for a recess of 5 minutes.

Member Gonzalez made a motion to approve an increase in rent of \$15 per year for a total of \$45 over three years based on the: inclusion of approximately 40% the electrical system replacement because over time the owner will recover costs for the remainder and that recovery be part of their appeal to the PUC on rates; exclusion of the fire hydrant replacement due to this being a health and safety issue; exclusion of new site construction costs; and exclusion of the one-time lease extension expense. *Member Longanecker second the motion.* Chair Padilla clarified whether the motion was to increase only affected residents below the market average of \$567 and that CPI would still be allowed. Member Gonzalez concurred. Member Davis commented that he believed this was still too high. Member Riesgo indicated he was prepared to concur with this proposal, he wants to see investment in the west side of

Chula Vista, however he requested a friendly amendment to Member Gonzalez to include all 200 affected residents. *Member Gonzalez agreed to the motion amendment to include all 200 affected residents. The motion passed (4-1) with member Davis voting against the motion.*

3. STAFF COMMENTS

None.

4. MEMBER'S COMMENTS

Chair Padilla thanked the audience for the good behavior throughout the hearing process. Member Gonzalez indicated that he also thanked the applicant, residents and staff for the process.

Chair Davis indicated that this would be his last meeting.

5. PUBLIC COMMUNICATIONS

Dan Runyon, Brentwood resident, thanked the City for the rent control ordinance.

6. ADJOURNMENT – Meeting was adjourned at 7:57 p.m.

Recorder, Stacey Kurz